

CIA INTERNAL USE ONLY

20 April 1960

*Bill
died in Senate
Judiciary
Natal for
new bill
in 8/72.
JHL*

MEMORANDUM FOR: Legislative Counsel

SUBJECT: H.R. 10978, "Military Personnel and Civilian
Employees' Claims Act of 1960"

1. I have received from you an extract from the Congressional Record dated 4 June 1960 (p. 6679) indicating that subject bill was placed on the consent calendar and passed by the House on the foregoing date. The bill is of considerable interest to CIA and if enacted would provide new authority which we would find useful in the settlement of employee claims. While no positive action by CIA now appears necessary, and the terms of the bill are generally favorable as they now stand, it would be desirable for this Agency to follow the progress of this bill through the Senate and, if opportune, to make a favorable comment to the cognizant committee.

2. My memorandum to you dated 18 July 1959 analyzed H. R. 7268, an earlier version of this bill. That draft was ineptly drawn and now appears to have been replaced by H.R. 10978.

3. This bill is of particular interest to CIA in view of the statement in

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4. The scheme of this bill is to extend to civilian agencies those provisions of law now covering claims by military and civilian personnel employed by the military departments. H.R. 10978 adopts all of the standards and much of the terminology now found in 10 USC 2732. Existing court decisions (see 31 USC 222c annotations) would be governing in CIA's administration of this proposal.

5. The principal provisions of this bill are as follows:

a. The bill applies generally to the Executive Branch, and "agency" is defined to include "independent establishments," e.g. CIA: sec. 2(1).

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b. The head of an agency "may prescribe" regulations whereby he or his designee may "settle and pay" claims in cash or in kind up to \$6500.00: sec. 3(a). This provides flexibility for CIA to incorporate such a law into our existing regulatory system and administer it through the existing Boards of Survey and Claims. This bill "does not apply to claims settled and paid before its enactment": sec. 3(a). On the possibility that such a bill might be enacted, it would be desirable for the Headquarters Board of Survey and Claims to consider whether to withhold action in appropriate cases to take advantage of this bill. The \$6500.00 limitation now appears in 10 USC 2732 and 14 USC 490 which are repealed and replaced by this proposed bill.

c. "Settle" is defined as meaning to "consider, ascertain, adjust, determine and dispose of any claim, whether by full or partial allowance or disallowance": sec. 2(3). Moreover, "notwithstanding any other provision of law, the settlement of a claim under this Act is final and conclusive": sec. 4. These provisions seem to give adequate authority to CIA to dispose completely of each matter presented. Notice that this authority does not replace or repeal existing CIA authority to utilize unvouchered funds, and therefore there appears to be no infringement of PL 81-110. Sections 5, 6 and 7 of this bill are specific repealers of existing laws, but the bill contains no general statement to the effect that all laws inconsistent therewith are repealed.

d. The bill would provide coverage to:

(i) "a member of the uniformed services under the jurisdiction of (an) agency," these being the Army, Navy, Air Force, Coast Guard, Marine Corps, C&GS and Public Health Service: sec. 3(a), sec. 2(2). The natural meaning of the words "under the jurisdiction of" seems to indicate that CIA could utilize this authority to reimburse one of our military details whose claim otherwise qualified.

(ii) "or ... a civilian officer or employee of that agency." As to CIA personnel, the foregoing clearly includes staff employees and staff agents. Whether any other classes, such as contract agents, are covered, I leave to the consideration of others in the Office of General Counsel. On this point, the provision in section 2(1) that the term "agency" "does not include any contractor with the

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United States" would not seem to be a basis for excluding contract agents, since the quoted passage defines an employer rather than an employee.

(iii) "If a person named in subsection (a) is dead, the head of the agency concerned, or his designee, may settle and pay any claim made by the decedent's surviving (1) spouse, (2) children, (3) father or mother, or both, or (4) brothers or sisters, or both, that arose before, concurrently with, or after the decedent's death and is otherwise covered by subsection (a). Claims of survivors shall be settled and paid in the order named": sec. 3(b).

e. The protection afforded relates to "damage to or loss of personal property": sec. 3(a). This term is not more specifically defined, but it is circumscribed by the requirements listed below. A person who qualifies as having suffered loss or damage to his personal property must meet the following tests:

(i) The loss or damage must be "incident to his service": sec. 3(a).

(ii) The property lost or damaged must be "determined to be reasonable, useful, or proper under the circumstances": sec. 3(a).

(iii) The claim must be "substantiated": sec. 3(a).

(iv) The property lost or damaged must have been in the "possession" of the claimant: sec. 3(a). This language is ambiguous and may be broader than the Congress realizes because the bill does not require that the property be owned by the claimant. What constitutes possession sufficient to justify recovery of damages may give rise to court or Comptroller General decisions.

(v) The loss or damage "did not occur at quarters occupied by the claimant within the fifty States or the District of Columbia that were not assigned to him or otherwise provided in kind by the United States": sec. 3(c)(2).

(vi) The loss or damage "was not caused wholly or partly by the negligence or wrongful act of the claimant, his agent or his employee": sec. 3(c)(3). This provision may result in the negligence of the Government being nullified by the contributory negligence of the claimant.

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(vii) The claim must be presented "in writing" and "within two years after it accrues, or within one year after the date of the enactment of this Act, whichever is later": sec. 3(c)(1). This period may be extended in the event of war or armed conflict proclaimed by the Congress or the President: sec. 3(c)(1), sec. 3(d).

f. Annual reporting to Congress of claims settled under this law is required: sec. 3(d).

g. Three existing laws are repealed, but, as they relate to the Department of Defense and the Coast Guard, these repealers have no bearing on the impact of this proposal on CIA.

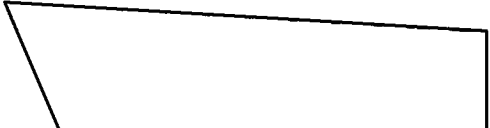
6. Questions which appear to require clarification include the following:

a. Whether or not this proposal would cover CIA contract agents (see para. 4(d)(ii) above).

b. Whether or not an employee is to be held "negligent" if he fails to provide insurance for his property. CIA and the State Department have adopted this position, but the military departments honor claims where the employee has not provided self-protection in the form of insurance.

c. How broad is the scope of the concept of loss or damage to property "incident to his service"? Is passive possession alone enough, or must the property have been lost or damaged while in use by the employee in his official duties?

While these questions eventually must be answered, in view of the similarity of this proposal to existing legislation and the stage of the bill in its legislative travels, it is probably impracticable to do more than to seek unofficial reactions from Committee staff members on these points. If such information can be developed by the Legislative Counsel's staff, it should be passed by memorandum to the Headquarters Board of Survey to assist in their decision-making process.


Assistant General Counsel

cc: Chairman, Hqs Board of Survey

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TRANSMITTAL SLIP		DATE
TO: <i>Joan</i>		
ROOM NO.	BUILDING	
REMARKS: <i>We probably have a file on HR 7268 Let's put this with it making the folder & making a file card.</i>		
FROM: <i>JHL</i>		
ROOM NO.	BUILDING	EXTENSION

FORM NO. 241
1 FEB 55

REPLACES FORM 36-8
WHICH MAY BE USED.

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